

Message

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**From:** Nanda, Sushila [Nanda.Sushila@epa.gov]  
**Sent:** 5/4/2021 10:50:38 AM  
**To:** Ahearn, Devon (ENRD) [Devon.Ahearn@usdoj.gov]  
**CC:** Lazos, Pamela [Lazos.Pamela@epa.gov]; Maslowski, Steven [Maslowski.Steven@epa.gov]; Levine, Bradley (ENRD) [Bradley.Levine@usdoj.gov]  
**Subject:** RE: THREE OTHER COMMENTS FW: PLEASE SEE NOTE RE FINANCIAL CAPABILITY ASSESSMENTS (FCA) [P. 31, PARAGRAPH 18 DOJ comment] FW: CRW - CD Mod Comments

See times in red that don't work

Sushila Nanda  
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**From:** Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>  
**Sent:** Monday, May 03, 2021 10:01 PM  
**To:** Nanda, Sushila <Nanda.Sushila@epa.gov>  
**Cc:** Lazos, Pamela <Lazos.Pamela@epa.gov>; Maslowski, Steven <Maslowski.Steven@epa.gov>; Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>  
**Subject:** RE: THREE OTHER COMMENTS FW: PLEASE SEE NOTE RE FINANCIAL CAPABILITY ASSESSMENTS (FCA) [P. 31, PARAGRAPH 18 DOJ comment] FW: CRW - CD Mod Comments

Thanks so much, Sushila. This is all very helpful. I would like to schedule another team call this week to continue going through the comments (we will use Teams so we can all see the document). Please let me know if any of the following time slots will work:

Tomorrow (Tues), 2-4pm  
Weds, 1-3pm  
Thurs, 2:30-4:30pm

Thanks,  
Devon

Devon Ahearn  
Trial Attorney

Devon.ahearn@usdoj.gov  
(202) 514-2717

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**From:** Nanda, Sushila <Nanda.Sushila@epa.gov>

**Sent:** Monday, May 3, 2021 3:22 PM

**To:** Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>

**Cc:** Lazos, Pamela <Lazos.Pamela@epa.gov>; Maslowski, Steven <Maslowski.Steven@epa.gov>; Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>

**Subject:** THREE OTHER COMMENTS FW: PLEASE SEE NOTE RE FINANCIAL CAPABILITY ASSESSMENTS (FCA) [P. 31, PARAGRAPH 18 DOJ comment] FW: CRW - CD Mod Comments

Devon, preliminarily, – thank you so much for being patient – these technical issues are a nightmare I know, so thanks again. I noted in red which of the 4 comments we discussed 5/3.

I hope what follows is not too confusing.

## Ex. 5 Deliberative Process (DP)

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**From:** Nanda, Sushila  
**Sent:** Sunday, May 02, 2021 6:27 AM  
**To:** Ahearn, Devon (ENRD) <Devon.Ahearn@usdoj.gov>; Lazos, Pamela <Lazos.Pamela@epa.gov>; Maslowski, Steven  
<Maslowski.Steven@epa.gov>; Levine, Bradley (ENRD) <Bradley.Levine@usdoj.gov>  
**Subject:** PLEASE SEE NOTE RE FINANCIAL CAPABILITY ASSESSMENTS (FCA) [P. 31, PARAGRAPH 18 DOJ comment] FW:  
CRW - CD Mod Comments

Cc'ing Brad Levine.

All, [I can further explain when we have our team call Monday May 3, 2021 at 2-3 pm, and I do  
hope it makes sense]. Thanks in advance for understanding. Specifically:

## Ex. 5 Deliberative Process (DP)

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First E-mail from our R5 colleague ORC attorney Gary Prichard:

**From:** Prichard, Gary <[prichard.gary@epa.gov](mailto:prichard.gary@epa.gov)>

**Sent:** Thursday, April 15, 2021 1:14 PM

**To:** Allen, Leslie (ENRD) <[Leslie.Allen@usdoj.gov](mailto:Leslie.Allen@usdoj.gov)>; Nanda, Sushila <[Nanda.Sushila@epa.gov](mailto:Nanda.Sushila@epa.gov)>

**Subject:** RE: I hear the draft revised FCA is still on EPA's website --

Here's what is on EPA's website (at <https://www.epa.gov/waterfinancecenter/financial-technical-assistance-and-tools-water-infrastructure#affordability>). So, communities that are arguing it is somehow final should be told this. In my cases, I'm saying "provide whatever information you want, but be aware that the guidance was never published in the Federal Register and is undergoing review."

## Water Affordability

### 2021 Financial Capability Assessment for Clean Water Act Obligations

On January 12, 2021, EPA signed a federal register notice finalizing the 2021 Financial Capability Assessment (FCA) for Clean Water Act (CWA) Obligations. A pre-publication of the 2021 FCA is available until the official version is announced in the Federal Register.

The 2021 FCA advances the ability of communities to more accurately demonstrate the financial burdens they face and increases the transparency of EPA's considerations as it endeavors to consistently apply FCA methodologies across the country. EPA's 2021 FCA guidance includes new metrics that more accurately reflect how much low-income communities can afford to pay for service, which impacts the affordability of capital expenditures and operation and maintenance needed to ensure CWA compliance. Additionally, EPA will apply the options and flexibilities from Appendix D of the 2021 FCA when considering economic impacts for public entities seeking revisions to designated uses, water quality standard (WQS) variances, and antidegradation reviews for WQS.

When the official version is announced in the Federal Register, the 2021 FCA will replace the 1997 Guidance for Financial Capability Assessment and Schedule Development.

- [2021 Financial Capability Assessment for Clean Water Act Obligations Guidance](#)

The 2021 Financial Capability Assessment (FCA) for Clean Water Act (CWA) Obligation was not published in the Federal Register and is undergoing review in accordance with the [Regulatory Freeze Pending Review Memorandum that White House Chief of Staff Ronald Klain issued on January 20, 2021.](#)

Second [excerpt] from my HQ colleague Chrisna Baptista who is the individual from my office who has been involved in the discussion about revising the FCA guidance, specifically from an E-mail sent 4/16 11:31 am (I highlighted the text):

"Hi Sushila –

WED and OW are still working with the Regions that provided comments on the pre-publication version of the 2021 FCA and are hoping to have a resolution on needed edits soon. Once we have a consensus, OW and OECA will brief our acting AAs on revisions to the 2021 FCA. I am not sure the timing on this process, but what I have been telling people is that the 2021 FCA was never finalized, so the 1997 FCA and 2014 Framework are the currently applicable guidances. Under the 2014 Framework, any additional relevant information can be considered by EPA, so if a community wants to submit information on its lowest quintile households, it can do that...."

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**From:** Ahearn, Devon (ENRD) <[Devon.Ahearn@usdoj.gov](mailto:Devon.Ahearn@usdoj.gov)>  
**Sent:** Friday, April 30, 2021 5:52 PM  
**To:** Kardeman, Lianna <[Kardeman.Lianna@epa.gov](mailto:Kardeman.Lianna@epa.gov)>; Lazos, Pamela <[Lazos.Pamela@epa.gov](mailto:Lazos.Pamela@epa.gov)>; Maslowski, Steven  
<[Maslowski.Steven@epa.gov](mailto:Maslowski.Steven@epa.gov)>; Nanda, Sushila <[Nanda.Sushila@epa.gov](mailto:Nanda.Sushila@epa.gov)>  
**Cc:** Levine, Bradley (ENRD) <[Bradley.Levine@usdoj.gov](mailto:Bradley.Levine@usdoj.gov)>  
**Subject:** CRW - CD Mod Comments

Hi all,

I have attached our edits and comments to the draft CRW CD modification. The formatting on the old document was unworkable, so I transferred the team's edits and comments to a Word version of the filed CD (I have confirmed that the Word version of the filed CD is identical to the filed 2015 version; I have attached it for reference). I have attached both a clean copy of the CD mod (which contains just comments) and a redline that I ran against the originally filed CD. I flagged a handful of comments for discussion during our next team meeting. If possible, I'd like to run through those comments during Monday's call.

Thanks,  
Devon

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